

¹ 5 U.S.C. § 8101 *et seq.*

overpayment by deducting \$387.29 from appellant's continuing compensation payments every 28 days.

FACTUAL HISTORY

On August 18, 1998 appellant, then a 35-year-old secretary, filed a traumatic injury claim (Form CA-1) alleging that on August 6, 1998 she strained her neck and shoulder when she pulled a fire door open while in the performance of duty. On September 8, 1998 OWCP accepted her claim for a cervical strain. Appellant stopped work on August 17, 1998. OWCP paid her wage-loss compensation on the periodic rolls, effective January 31, 1999.

In a November 15, 2019 memorandum, the employing establishment noted that appellant's most recent EN1032 form indicated that she had received SSA disability only, but suspected that because she turned 66 years old that year, it was more likely than not that she had begun receiving Federal Employees Retirement system (FERS) age-related benefits instead of SSA disability. It requested that a FERS/SSA dual benefits calculation form be sent to SSA in order to determine if her compensation needed to be offset.

On February 21, 2020 SSA completed the dual benefits calculation form, which indicated appellant's SSA benefit rates with a FERS offset and without a FERS offset from January through December 2019: beginning January 2019, the SSA rate with FERS was \$1,403.10 and without FERS was \$1,203.70; and beginning December 2019, the SSA rate with FERS was \$1,425.50 and without FERS was \$1,222.90.

On March 5, 2020 OWCP prepared a FERS offset calculation worksheet wherein it noted the calculations of appellant's overpayment from January 1, 2019 through February 29, 2020. The total overpayment was determined to be \$2,803.39.

In a letter dated March 5, 2020, OWCP notified appellant that, based on the information provided by SSA regarding the amount of her age-related retirement benefits attributable to federal service, her FECA compensation would be reduced to \$1,738.98 every 28 days.

On March 19, 2020 OWCP issued a preliminary overpayment determination, finding that appellant was overpaid compensation in the amount of \$2,803.39 for the period of January 1, 2019 through February 29, 2020 because the appropriate SSA/FERS offset was not applied to her wage-loss compensation payments for this period. It determined that she was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-20), with supporting financial documentation, to determine a reasonable repayment method, and advised her that she could request waiver of recovery of the overpayment. It advised her that it would deny waiver if she failed to furnish the requested financial information within 30 days. OWCP further informed appellant that, within 30 days of the date of the letter, she could contest the overpayment and request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. No response was received.

By decision dated April 30, 2020, OWCP determined that appellant had received an overpayment of compensation in the amount of \$2,803.39 for the period January 1, 2019 through February 29, 2020 because it failed to offset her compensation payments by the portion of her age-

related retirement benefits that were attributable to her federal service.² It further found that she was without fault in the creation of the overpayment, but denied waiver of recovery, because she had not submitted evidence in response to its preliminary overpayment determination. OWCP required recovery of the overpayment by withholding \$387.29 from appellant's continuing compensation payments every 28 days beginning May 24, 2020.

LEGAL PRECEDENT -- ISSUE 1

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.³ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁴

Section 10.421(d) of FECA's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA benefits that are attributable to federal service of the employee.⁵ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,803.39 as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period January 1, 2019 through February 29, 2020, without appropriate offset.

To determine the amount of the overpayment, the portion of the SSA age-related retirement benefits that were attributed to federal service must be calculated. The SSA provided appellant's SSA rate with FERS and without FERS during the applicable period. OWCP found that, since SSA benefits were paid monthly and FECA benefits were paid every 28 days, the monthly offset had to be adjusted to a 28-day payment cycle amount. This amount differed for each period beginning January 2019. OWCP calculated that the lack of offset from January 1, 2019 through February 29, 2020, resulting in an overpayment total of \$2,803.39. The Board has reviewed OWCP's calculations and finds that it properly determined that appellant received prohibited dual

² OWCP listed May 1, 2019 as the date appellant began receiving dual benefits; however, it appears that this is a typographical error as the overpayment amount it arrived in its decision is based on a calculation beginning January 1, 2019.

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

⁶ FECA Bulletin No. 97-09 (February 3, 1997).

benefits totaling \$2,803.39, thus creating an overpayment of compensation in that amount, for the period of January 1, 2019 through February 29, 2020.

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless “incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience.”⁷ Section 10.438 of OWCP’s regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.⁸

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the overpayment.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.⁹ Appellant, however, had the responsibility to provide the appropriate financial information and documentation to OWCP.¹⁰

Consequently, as appellant did not submit the information required under 20 C.F.R. § 10.438 of OWCP’s regulations, necessary to determine her eligibility for waiver, the Board finds that OWCP properly denied waiver of recovery of the overpayment.¹¹

⁷ 5 U.S.C. § 8129.

⁸ 20 C.F.R. § 10.438.

⁹ *Id.* at § 10.436.

¹⁰ *Id.* at § 10.438.

¹¹ *See T.E.*, Docket No. 19-0348 (issued December 11, 2019).

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.¹² Section 10.441(a) of the regulations¹³ provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”¹⁴

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$387.29 from appellant's continuing compensation payments every 28 days.

Appellant did not complete the Form OWCP-20 or otherwise provide the necessary financial information to support her income and expenses prior to the final April 30, 2020 overpayment decision. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.¹⁵ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.¹⁶ As appellant did not submit the financial documentation to OWCP as requested, the Board finds that there is no evidence of record to establish that requiring recovery of the \$2,803.39 overpayment at the rate of \$387.29 every 28 days from her continuing compensation payments was unreasonable.¹⁷

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$2,803.39 for which she was without fault, as she concurrently received SSA age-related retirement benefits and FECA wage-loss compensation for the period January 1, 2019 through

¹² See *C.A.*, Docket No. 18-1284 (issued April 15, 2019); *Lorenzo Rodriguez*, 51 ECAB 295 (2000); *Albert Pineiro*, 51 ECAB 310 (2000).

¹³ 20 C.F.R. § 10.441(a).

¹⁴ *Id.*

¹⁵ *Supra* note 10.

¹⁶ See *A.S.*, Docket No. 19-0171 (issued June 12, 2019); *Frederick Arters*, 53 ECAB 397 (2002); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.3 (September 2018).

¹⁷ See *E.K.*, Docket No. 18-0587 (issued October 1, 2018); *S.B.*, Docket No. 16-1795 (issued March 2, 2017).

February 29, 2020 without appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$387.29 every 28 days from her continuing compensation payments.

ORDER

IT IS HEREBY ORDERED THAT the April 30, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 18, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board